

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF AND APPENDIX FOR APPELLEE

United States Court of Appeals

DISTRICT OF COLUMBIA

JANUARY TERM, 1944

No. 8617

147

JAMES WILLIAMS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA**

EDWARD M. CURRAN,

United States Attorney,

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UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED JAN 8 - 1944

Joseph W. Stewart

CLERK

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(I)

United States Court of Appeals

DISTRICT OF COLUMBIA

JANUARY TERM, 1944

No. 8617

JAMES WILLIAMS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

This appellant was tried with a codefendant, one James M. Childs, and both were convicted of grand larceny. The evidence tended to show that Childs stole the article and placed it in a wheelbarrow nearby, and the appellant in charge of the wheelbarrow took the article away and was still in possession two or three hours later when accosted by the police and turned it over immediately to them. There was evidence tending to show honesty of purpose on the part of appellant and there was evidence tending to show an intent to steal. This appeal is taken on the grounds that the Court should of its own motion have directed an acquittal, and that an instruction requested by the appellant was improperly refused.

The facts are as follows: The appellant had frequently used a wheelbarrow belonging to a junk dealer in this city for the purpose of collecting newspapers and other articles and selling

them to the junkman. On August 18, 1943, about 12:30 o'clock in the afternoon, appellant borrowed the wheelbarrow and thereafter he and the codefendant, James M. Childs, were together with the wheelbarrow. A doctor having offices in the building located on the northeast corner of 20th and I Streets NW., Washington, D. C., parked his car in the driveway adjoining that building shortly after noon and left it there, and in it was his medical kit with contents of a value of more than \$50.00. Sometime before 2:00 o'clock while the kit was still in the automobile Childs stole it from the automobile and was seen carrying it across the street and putting it in the wheelbarrow, which was directly across the street from the driveway in which the doctor's automobile was parked. This appellant was not to be seen at that time, and according to his own testimony was collecting newspapers in a building nearby at that time. He reappeared shortly afterwards and saw the kit in the wheelbarrow. Between 1:30 and 2:00 the appellant returned to the junk shop and dumped some newspapers out of the wheelbarrow and at the bottom was seen the doctor's medical kit. The junkman told the appellant he should return it to the owner and he found the name and address in the kit. The appellant asked him to telephone the doctor, but the junkman told the appellant that he was too busy, and instead he gave the appellant a slip of paper with the name and address of the doctor on it. The appellant did not return the kit to the doctor, and his explanation, in his testimony, was that he went to the house on the *southeast* corner of 20th and I Streets and told the lady who answered at the door that he wanted to return the doctor's bag to him, but she told him there was no doctor living there and for him to go about his business. The appellant further explained that he does not read well. At about 4:00 o'clock in the afternoon he appeared at the house of an acquaintance, one Patty Lises, with the bag. Childs, who was a friend of Patty Lises, was there. At that place, the bag was opened and the contents shown around. The appellant restored the contents to the bag and took it next door and placed it in a wood box in the rear yard. Meantime the doctor had discovered the theft of his bag and reported the matter to the police. A police

officer investigating the case learned from Patty Lises that the appellant had the bag, and he accosted the appellant in the rear yard of the adjoining house, and the appellant immediately turned the bag over to him. When the junkman first saw the bag in the wheelbarrow and asked the appellant where he got it, the appellant stated that he had found it; and when he was questioned by the police officer the appellant made the same statement to him. To a similar inquiry made by the junk owner's helper, appellant responded that a lady had given the bag to him.

STATUTES INVOLVED

Sec. 22-2201 (6: 60). Grand Larceny.

Whoever shall feloniously take and carry away anything of value of the amount or value of \$50 or upward, including things savoring of the realty, shall suffer imprisonment for not less than one nor more than ten years.

Sec. 22-105 (6: 5). Persons advising, inciting, or conniving at criminal offense to be charged as principals.

In prosecutions for any criminal offense all persons advising, inciting, or conniving at the offense, or aiding or abetting the principal offender, shall be charged as principals and not as accessories, the intent of this section being that as to all accessories before the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be.

SUMMARY OF ARGUMENT

I

No motion was made by the appellant for a directed verdict of not guilty at the conclusion of the evidence for the Government. It was not the duty of the Court in the absence of such motion to direct an acquittal. It is not to be assumed what the action of the trial court would have been had such a motion been made. Had the Court denied a motion so made the appellant would have waived any exception to that denial had he proceeded to offer evidence in his own behalf. It is not good

reason and it is not good law that an accused person on trial, by failing to make a motion at the conclusion of the evidence for the prosecution, can gain an advantage he would not gain had such motion been made. Hence, this Court ought not to hold that the trial court should have directed an acquittal on its own motion at the conclusion of the Government's case.

II

Neither did appellant move for a directed verdict of acquittal at the conclusion of all the evidence. This point, now made for the first time in this Court, may for that reason be disregarded. However, the appellee answers this point on the merits that the evidence as a whole was sufficient to support the verdict and judgment against the appellant. There was evidence tending to show, among other things, these facts: That while the appellant and Childs were engaged in a common enterprise of a noncriminal nature, Childs stole a valuable article from out of the automobile of the owner and placed it, not in his own complete custody, but in a vehicle being operated by the appellant; that the appellant immediately became aware that the article was there; that the article had the appearance of something that was not valueless and was not abandoned; that the appellant took it away from that place; that his attention was called to the possibility of his getting into trouble on account of it; that although supplied with the name and address of the owner, he did not return it to the owner; that he still had possession of it two hours later, exhibited its contents to acquaintances and thereafter concealed it; that he stated to the junkman that he had found it, which was not true, and stated the same thing to the officer at a time when Childs was standing in the yard next door in the view of the officer; that he told another man in the junk shop that a lady had given him the article; and that on the stand the appellant, testifying in his own behalf, made false statements. These facts were sufficient to justify the trial court in leaving the case to the jury.

The trial court properly refused an instruction verbally requested by the appellant. In its general instructions, the

III

trial court gave an instruction as to the law regarding accessories which appellee claims was full and correct. Appellant then requested the court to instruct the jury that the appellant could not be guilty unless he took part in the taking of the article as well as the carrying away thereof. Under the circumstances, the instruction as requested would have been misleading. The fact was undisputed that Childs took the article out of the automobile and the appellant had no physical part in that act. The part the appellant played was to take the article away in the wheelbarrow after it had been placed there by Childs. To have given the instruction as requested might well have conveyed to the jury the idea that the taking of the article was a taking in the physical sense, and that under the evidence the appellant could not have been guilty. Having already fairly and fully instructed the jury on that point, the trial court was justified in refusing an instruction verbally requested which was in itself not full and not accurate.

ARGUMENT

I

The trial court did not err in failing to direct an acquittal on its own motion at the conclusion of the evidence for the Government.

At the close of the evidence for the Government neither defendant made a motion for a directed verdict of acquittal (Appellee's appendix 22). Appellant assigns such failure as to him an error for which this court should reverse. No authority is cited to the effect that it is the duty of a trial judge to direct an acquittal when the defendant does not move for one.¹ It can hardly be asserted that the omission of the trial court to take such affirmative action constitutes a denial of due process. Not even the right to counsel is necessarily a part of due process. *Betts v. Brady*, 316 U. S. 455, 471; and see *O'Brien v. O'Brien*, 294 Ky. 793, 172 S. W. (2d) 595, 609 (1942).

¹The authorities are to the contrary. Cent. Dig. Crim. Law Key No. 1044 h, 1045, 1054 (3) 1129 (1, 3).

It would not be right that a defendant on trial, by failing to move for a directed verdict at the conclusion of a case for the prosecution, should gain an advantage which he would not have if he did make such a motion and lost it. Yet that precise result would follow if the rule of law contended for by the appellant in this case were to be adopted. An accused who moves for a directed verdict at the conclusion of the evidence for the prosecution loses any right to an exception on that ground if he thereafter proceeds to introduce evidence on his own behalf. *Ercoli v. United States*, 76 App. D. C. 360, 131 F. (2d) 354 (1942). This rule applies even where the evidence, when the motion was made, was insufficient and the court erroneously denied the motion. *Leyer v. United States*, 183 F. 102, 104, (C. C. A. 2, 1910).

II

Appellant also urges that the trial court should have directed an acquittal on its own motion at the conclusion of all the evidence. This point is probably subject also to the criticism that it was not raised at the trial² However, the appellant takes the position, in answer to this point, that the evidence was sufficient to go to the jury on the question of the appellant's guilt and fully supported the verdict of conviction.

There can be no question but that Childs stole this article, and that within a few minutes the appellant was in complete and conscious control of the article. This possession of recently stolen property justified the jury in inferring guilt on the part of appellant, unless his possession was satisfactorily explained. *Edwards v. United States*, No. 8513, App. D. C., decided December 6, 1943. The only issue in this case, therefore, was whether the appellant's explanation was as a matter of law satisfactory.

The evidence showed that the appellant knew Childs, and had known him for six months; that they had worked together in a trucking business; that on this particular day the appellant hired the wheelbarrow and thereafter was in company with Childs; that shortly after Childs had stolen the article (in the absence of appellant) and put it in the wheelbarrow, appellant

² See "Grounds of Appeal," dated October 20, 1943 (App. 37), and "Assignment of Errors," dated Nov. 23, 1943 (App. 33).

discovered it there and put newspapers on top of it and moved it away from the vicinity; that he took it to the junk shop and sold the newspapers as it had been his custom; that when the newspapers were taken off the wheelbarrow, the owner of the junk shop saw the medical kit and asked the appellant where he had gotten it, and the appellant stated to him falsely that he had found it; that another man at the junk shop asked the appellant where he had gotten it, and appellant told him falsely that a lady had given it to him; that the appellant was told by the owner of the junk shop that he would get in trouble with such a valuable article in his possession and that he had better return it to the owner, and furnished appellant with the name and address of the owner; that this address was two or three blocks away from the junk shop and in a neighborhood where the appellant himself had lived and worked, yet the appellant did not return the article to the owner nor did he come back to the junkman to get a better address or direction; that for two hours more the appellant kept the article in his exclusive possession, exclusive even of Childs, who was with him a few minutes of that time; that appellant concealed the article at a place where only he necessarily knew; that although he returned the article immediately to the policeman when questioned about it, he knew that other persons knew he had it and possibly had told or would tell the police that fact; that when being questioned by the officer as to how he got the article he stated to him falsely that he had found it, when the fact was, as he knew, that Childs, who was in the officer's view as appellant was talking to him, was the man who had put the article in the wheelbarrow; and finally, when he testified in his own behalf about the matter, appellant made statements at variance with the testimony of other witnesses, one of them called to the stand by the appellant. The manner of acquiring this article and the dealing with it by the appellant for the two or three hours he had it, when coupled with his statements both judicial and extrajudicial (see: *Wilson v. United States*, 162 U. S. 613, 619) were, it is submitted, sufficient to put to the jury the question of appellant's guilt.

The question was whether there was some evidence competent and substantial which fairly tended to sustain the verdict.

United States v. Socony-Vacuum Oil Co., 310 U. S. 150, 254.

Abrams v. United States, 250 U. S. 616, 40 S. Ct. 28, 63 L. ed. 1154.

Stilson v. United States, 250 U. S. 583, 40 S. Ct. 28, 63 L. ed. 1154.

United States v. Manton, 107 F. (2d) 834, 839 (C. C. A. 2).

Pierce v. United States, 252 U. S. 239, 251, 40 S. Ct. 205, 64 L. ed. 542.

In determining the sufficiency of evidence, consideration should be given to "every fact then in evidence tending to sustain plaintiff's case, and every inference reasonably deducible therefrom" and "such a motion can only be granted when but one reasonable view can be taken of the evidence and the conclusions therefrom." *Smith v. United States*, 61 App. D. C. 344, 62 F. (2d) 1061 (1933).

III

At the conclusion of the instruction to the jury appellant requested a further instruction on the law regarding accessories. The trial court's denial of such request was excepted to and is now assigned as error. The part of the court's instruction dealing with the law as to accessories is as follows:

There is a principle of law which you may apply in reaching your verdict if in your judgment the facts of the case warrant application of the principle. Where two or more persons are jointly engaged in the furtherance of an unlawful purpose, each person so joined up in the furtherance of that unlawful purpose adopts as his own anything done by any other person so joined up with him in the unlawful venture. This principle of law arises out of a statute which provides that in prosecutions for any criminal offense, all persons advising, inciting, or conniving at the offense, shall be charged as principals. It is the theory of the Government that

Childs actually took and carried away the doctor's case from his automobile and placed it in Williams' wheelbarrow, and that Williams, knowing that the doctor's case was stolen, carried it away in his wheelbarrow and removed it therefrom to a place of concealment, and that in so doing, he was acting in concert with Childs to perpetrate the offense of larceny. In order to warrant a conviction of Williams you must find, beyond a reasonable doubt from the facts and circumstances shown in the evidence as an essential element of the Government's case against Williams, that there was a mutual understanding between Childs and Williams that they, acting in concert, would effect the larceny of the doctor's case. (Appellee's appendix, p. 31.)

The appellant then requested that the court instruct the jury that the appellant could not be guilty unless the jury found, beyond a reasonable doubt that he assisted and assisted or connived in the taking of the property as well as the carrying away thereof. This the court refused to do, stating that he had already fully covered the subject in his instruction. (App. 32.)

It is submitted that the trial court acted properly; first, because the instruction already given was full and correct, and secondly, because the instruction requested was not full and correct. The instruction as requested would, under the evidence as it went to the jury, have been misleading and confusing to the jury. The evidence was clear that it was Childs who originally took the article out of the automobile and put it in the wheelbarrow, and that it was the appellant who moved the wheelbarrow away with the article in it. For the court to have given the instruction that they must find that the appellant participated in the "taking" as well as the "carrying away" would undoubtedly, without further explanation, have conveyed to the minds of the jury the idea that the "taking" referred to was the physical removal of the article from the automobile, while the "carrying away" was the moving of the article in the wheelbarrow from the vicinity. To have balanced and completed the instruction would have required explanation on the part of the court of the rule that one may be

guilty although he takes no physical part in a given act, and the circumstances under which one may be so guilty. But this amplification was not included in the requested instruction. The court, therefore, was justified in not granting the verbal request. Cf. *Hodge v. United States*, 75 App. D. C. 332. (1932.)

CONCLUSION

It is respectfully submitted that the appellant received a fair trial, that the evidence was sufficient to support the verdict of conviction, that the court properly instructed the jury, and that the judgment should be affirmed.

Respectfully submitted.

EDWARD M. CURRAN,
United States Attorney.

BERNARD MARGOLIUS,
Assistant United States Attorney.

CHARLES B. MURRAY,
Assistant United States Attorney.

APPENDIX

UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1943

No. 8617

JAMES WILLIAMS, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

FILED NOVEMBER 30, 1943

(11)

OCTOBER TERM, 1943

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

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District Court of the United States for the District of Columbia

Criminal No. 72448

UNITED STATES

vs.

JAMES WILLIAMS ET AL.

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered, that in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 Criminal No. 72448—Grand Larceny

Filed in open Court Aug. 30, 1943. Charles E. Stewart, Clerk.

District Court of the United States for the District of Columbia

Holding a Criminal Term

July Term, A. D. 1943

DISTRICT OF COLUMBIA, ss:

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That one James Williams and one James M. Childs, on, to wit, the eighteenth day of August 1943, and at the District of Columbia aforesaid, one bag, of the value of twenty-two dollars and ninety-five cents, one blood pressure outfit, of the value of ten dollars and fifty cents, one stethoscope, of the value of six dollars, one case of instruments, of the value of thirty-six dollars, one metal clip remover, of the value of three dollars and fifty cents, twenty-six metal clips, of the value of two dollars, one scalpel, of the value of three dollars, one diag-

nostic otoscope, of the value of five dollars, one case of tablets, of the value of ten dollars, two rolls of adhesive tape, each roll of the value of thirteen cents, two boxes of digifoline, each of the value of one dollar, four boxes of gauze bandage, each of the value of ten cents, two bottles of aspiris tablets, each of the value of thirty cents, one box of coramine, of the value of two dollars, three boxes of salve, each of the value of twenty-five cents, one tube of nitroglycerine, of the value of one dollar, four packages of metal clips, each package of the value of fifty cents, one tube of tongue depressors, of the value of one dollar, one tube of applicators, of the value of fifty cents, one box of surgical sutures, of the value of two dollars, one box of pituitrin, of the value of one dollar, one box of adrenalin chloride solution, of the value of one dollar and fifty cents, ten gauze pads, each of the value of five cents, eleven bandaids, of the value of fifteen cents, five packages of sterile dressings, each of the value of five cents, three packages of sterile dressings, each of the value of ten cents, and two catheters, each of the value of seventy-five cents, of the goods, chattels, and property of one Julian M. Howe, then and there being found, feloniously did steal, take, and carry away; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

EDWARD M. CURRAN,
*Attorney of the United States in
 and for the District of Columbia.*

A True bill:

WILLIAM H. DYER, *Foreman.*

3 District Court of the United States for the
 District of Columbia

Friday, September 3, 1943

The Court resumes its session pursuant to adjournment:
 Mr. Justice Letts, Presiding.

No. 72448

UNITED STATES

vs.

JAMES WILLIAMS, JAMES M. CHILDS

Indicted for Grand Larceny

Come as well the Attorney of the United States, as the defendants in proper person, each in custody of the Superintendent of the Washington Asylum and Jail, the defendant Williams by his attorney, D. C. Colladay, Esquire; whereupon each defendant being arraigned upon the indictment, the reading whereof he specifically waives, pleads not guilty thereto, and for trial puts himself upon the country and the Attorney of the United States doth the like.

4 District Court of the United States for the
District of Columbia

Friday, September 17, 1943

The Court resumes its session pursuant to adjournment:
Mr. Justice Letts, Presiding.

* * * * *

No. 72448

UNITED STATES

vs.

JAMES WILLIAMS, JAMES M. CHILDS

Indicted for Grand Larceny

Come again the parties aforesaid, in manner as aforesaid, and the same jury that was respited in this case yesterday; whereupon said jury upon their oath say that each defendant is guilty in manner and form as charged in the indictment; whereupon each said defendant is remanded to the Washington Asylum and Jail.

5

District Court of the United States for the
District of Columbia

Friday, October 15, 1943

The Court resumes its session pursuant to adjournment:
Mr. Justice Letts, Presiding.

* * * * *

No. 72448

UNITED STATES

vs.

JAMES WILLIAMS, JAMES M. CHILDS

Indicted for Grand Larceny

Come as well the Attorney of the United States, as each defendant in proper person, each in custody of the Superintendent of the Washington Asylum and Jail and the defendant James Williams by his attorney D. C. Colladay, Esquire; the defendant James M. Childs by his attorney Leonard S. Melrod, Esquire; and thereupon it is demanded of the defendants what further he has to say why the sentence of the law should not be pronounced against him and he says nothing except as he has already said; whereupon it is considered by the Court that, for his said offense, each said defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Four (4) months to One (1) year and One (1) day for the defendant James Williams and One (1) year to Three (3) years for the defendant James M. Childs.

6 In the District Court of the United States for the
District of Columbia
Criminal No. 72448

UNITED STATES

vs.

JAMES WILLIAMS, JAMES M. CHILDS

Filed Oct. 15, 1943. Charles E. Stewart, Clerk.

*Affidavit in support of application for leave to proceed without
prepayment of costs*

I, James Williams, being first duly sworn according to law, depose and say that I am the defendant in the above-entitled cause, and, in support of my application for leave to proceed in said cause without being required to prepay fees or costs, state as follows:

1. That I am a citizen of the United States.
2. That because of my poverty I am unable to pay the costs of said suit or action.
3. That I am unable to give security for the same.
4. That I believe I am entitled to the redress I seek in said suit or action.
5. That the nature of my cause of action is briefly stated as follows:

Appeal from conviction and sentence on charge of grand larceny.

JAMES WILLIAMS.

Subscribed and sworn to before me this 15th day of October 1943.

Notary Public, D. C.

Let the defendant proceed on appeal without prepayment of costs.

F. DICKINSON LETTS,
Justice.

[SEAL]

Charles E. Stewart, Clerk, District Court of the United States for the District of Columbia, by H. M. Hull, Deputy Clerk.

7 In the District Court of the United States for the
 District of Columbia
 Criminal No. 72448

UNITED STATES OF AMERICA

vs.

JAMES WILLIAMS, JAMES M. CHILDS

Filed Nov. 23, 1943. Charles E. Stewart, Clerk.

Bill of Exceptions

Be it remembered that this cause came on for trial on September 16, 1943, before the Honorable Justice F. Dickerson Letts, in Criminal Court No. One of the District Court of the United States for the District of Columbia. The United States was represented by Mr. Bernard Margolius, Assistant United States Attorney, and the defendant, James Williams, was represented by D. C. Colladay, and the defendant, James M. Childs, was represented by Mr. Leonard S. Millrod. The jury being satisfactory to counsel for both sides were duly sworn to try the said cause. After an opening statement made on behalf of the United States, the Government, to maintain the issues on its part joined, introduced the following evidence: And the following-named witnesses on being first duly sworn, testified as indicated:

Dr. Julian M. Howe, testified that he was a doctor of medicine, maintaining an office in an apartment building at 901 20th Street NW., Washington, D. C.; that on August 18, 1943, he came to his office shortly after noon and parked his car in a driveway adjacent to 901 20th Street NW. He left in the car at that time his medical bag, containing certain valuable instruments of a value in excess of \$50.00. He returned to his car about 2:00 in the afternoon and discovered his property missing. He returned to the office and notified the police. The witness testified further that he did not know either of
8 the two defendants, and did not authorize anyone to
 remove the medical bag. The medical bag and its con-
 tents thereupon were exhibited to the witness who iden-
 tified the same as belonging to him, and as being the property

stolen from the automobile at the place and on the date above mentioned. This property was thereupon offered in evidence and admitted.

Macie J. Brown, testified that she was employed by Dr. Julian M. Howe in his office at 901 20th Street NW. as a receptionist; that shortly before 2:00 on the afternoon of August 18, 1943, she left the apartment building for the purpose of going to a drug store on the southeast corner of 20th Street NW. and as she left the building she observed the defendant Childs carrying a black medical bag out of the alley in which Dr. Howe's car was parked. This so-called alley, the witness explained, was a driveway which had only one entrance, that being on 20th Street and lies adjacent to the apartment building at its northerly end. The witness saw the defendant Childs carry the bag diagonally across 20th Street to a wheel barrow standing on the sidewalk on the westerly side of 20th Street directly opposite the driveway of the apartment house in front of which the witness was standing. The witness saw the defendant Childs put the bag into the wheel barrow. She stated that she then walked south on 20th Street to and across I Street, and entered the drug store on the southeast corner of the intersection; that she made a purchase and then returned to the doctor's office in the apartment building. She stated that the entire trip consumed about twenty minutes.

On cross-examination the witness stated that in observing the defendant Childs she had to look northerly along 20th Street and had a clear view, but did not see the defendant Williams. She likewise testified that in proceeding to the drug store, and on her return trip as well, she had a clear view of the street and did not see the defendant Williams. She stated that

9 she could not identify Williams as having seen him at that time or any time previous thereto. The witness further testified that the apartment house in which the doctor's office is located, occupies the northeast corner of 20th Street and I Street NW., and fronts on 20th Street and has no entrance on the I Street side. She testified further that she attended two lineups, the first of which she was unable to identify anyone, but the second she picked Childs as the individual she saw carrying the bag on the day in question.

Maurice Wall testified that he was the owner of a junk shop located at 2000 L Street NW. and that on August 18, 1943, defendant Williams came to him and borrowed a wheel barrel. Between 1:30 and 2:00 p. m. Williams returned with the wheel barrel. At that time he saw in the wheel barrel a stack of old newspapers which he purchased from Williams and also underneath the papers a case which appeared to be a medical kit. He asked Williams where he got the bag, to which Williams replied that he found it. Williams opened it and it was found to be a doctor's medical kit. From papers inside, the witness ascertained the name of the apparent owner, Dr. Julian M. Howe. The witness told Williams he was likely to get in trouble having a bag like that and that he had better return it to the owner. Williams asked the witness to look up the owner's address and to telephone him. The witness looked up the address but was too busy to telephone and so wrote the address on a slip of paper and handed it to Williams and told him that the address was just up the street a couple of blocks at the corner of 20th and I Streets NW. Williams went away carrying the bag.

On cross-examination the witness stated that when the newspapers were taken from the wheel barrel at his shop, and the bag was thus uncovered, it was apparent to him, from Williams' conversation with the witness, that Williams did not
 10 know the nature of the bag which he had. The witness also testified that Williams was not under the influence of liquor. The witness further testified that Williams did not at any time attempt to sell the bag.

John J. Bailey, testified that he was a member of the Metropolitan Police Department and assigned to No. 3 Precinct, and that he made an investigation of this case; that upon information received he went to Government Court and there placed the defendant James Williams under arrest. Williams thereupon took the witness to 1135 Government Court and in the rear yard the defendant Williams reached into a wood box, covered with an old carpet, and took out a doctor's case and contents. The officer thereupon identified the bag, previously admitted as the bag which he recovered from the rear of 1135

Government Court as indicated above. The witness thereupon questioned Williams, who stated that he had found the bag and did not know anything about it. Thereupon, witness took defendant Williams to No. 3 Precinct where he further questioned him, at which time the defendant Williams stated that it was the defendant Childs who took the bag and put it in a wheel barrel and that he, Williams, pushed it down the street. Williams also stated to the witness that it was he who hid the bag in the place from which it was recovered. The witness stated further that after defendant Childs had been arrested he questioned Childs and that Childs stated that he was with Williams on the afternoon in question, but left him about 1:00 p. m. after Williams had collected some old newspapers; and Childs denied that he had taken the bag.

On cross-examination the witness stated that upon his arrival at Government Court his information that Williams was the person who had the bag, was given him by Patty Lisles. The witness further stated that at the time Williams produced the bag and turned it over to the witness he saw the
 11 defendant Childs sitting in the back yard of 1133 Government Court. The witness further stated that in the questioning of Williams at No. 3 Precinct Station House, Williams told him that he had at one time, while in possession of the bag, attempted to find the person to whom it belonged. The witness further testified that Macie Brown attended two lineups, in each of which the defendant Williams was included, and in the second of which the defendant Childs was included; that she identified no one in the first lineup, but identified Childs in the second lineup.

Thereupon, the Government rested.

Thereupon, defendant Childs called on his behalf the following-named witnesses, each of whom were duly sworn and testified under oath as indicated:

Patty Lisles testified that she lived at 1133 Government Court; that she was a friend of the defendant Childs, and that Childs came to her house about 12:00 on August 18, 1943, and spent the afternoon there; that Patty Lisles and her husband, John Lisles, were drinking at the house that afternoon and that

about 4:00 p. m. the defendant Williams came through the back door of the house into the kitchen with a doctor's bag.

Childs was sitting in the kitchen on the steps leading to the second floor of the house. Williams opened the bag and took out some of the instruments, indicating that one of the instruments was a stethoscope. When she saw what he had, she told him to get it away from there. She saw him take the bag into the next door yard and put it in the box.

On cross-examination by defendant Williams she stated that Williams had not been the one who removed the stethoscope or other articles from the bag and testified that the defendant Williams had taken other articles which they had taken from the bag and were playing with, and himself replace them all in the bag and closed it up, telling them that they must not handle the articles as they might damage them. She further testified that Childs was a rather good friend, and frequently visited at the Lisles' house.

12 Defendant James M. Childs thereupon took the stand in his own behalf and testified that he knew the defendant James Williams, and that both of them work on a trash truck together. The witness testified that on the morning in question he did not go to his usual job, but that he and Williams worked for a man named Brown who had a truck and were going that morning to collect some scrap metal; that the two of them worked with Brown until about 11:30 or 12:00; that during the morning the witness had had some liquor to drink; that after returning with the truck to Brown's place within two or three blocks of Government Court, he and Williams went by the Lisles' house and there Williams left and went away, some place not known to witness. He further testified that at the Lisles' house he started drinking and that he stayed there all afternoon. He stated that he slept part of the time on the steps in the kitchen and that he was present when Williams came in about 3:30 p. m. with a black bag. The witness stated that he did know what Mrs. Lisles said to Williams. The witness further stated that Williams took the bag out.

Thereupon, the defendant Childs rested:

Thereupon the defendant James Williams, to maintain his defense, offered the following testimony:

Louis M. Hicks testified that he had worked regularly for many years as a helper to Maurice Wall in operating the junk shop at 2000 L Street NW.; that on August 18, 1943, the defendant Williams who often collected newspapers and magazines for sale to the junk shop and who, as was customary, borrowed a wheel barrel from the shop for that purpose, came to the shop about 12:30 p. m. and borrowed a wheel barrel saying that he was going to collect some newspapers. He further testified that about an hour later the defendant Williams returned to the shop with the wheel barrel loaded with newspapers and that the papers were thereupon unloaded and were

being weighed up by the witness and Maurice Wall and
13 defendant Williams when they discovered the black bag

lying on the bottom of the wheel barrel and Maurice Wall asked the defendant Williams what he had there. The witness stated that Williams simply said he had a bag. The witness went on to recount how Wall had remarked that it looked like a doctor's bag and had Williams open it and remarked to Williams that it was a valuable bag, and that he had better take the bag back to the owner, and then, at William's request, looked up the address of Dr. Julian M. Howe, whose name was found in the bag. The witness testified that he asked Williams where he had obtained the bag and that Williams told him that a lady had given it to him. The witness testified that Williams asked Wall to telephone the owner of the bag but Wall was too busy. The witness further testified that when Wall gave Williams a slip of paper with the address of Dr. Howe written on it, he told Williams that the place was just a couple of blocks away at 20th and I Streets NW. The witness further said that Williams then took the bag, saying that he was going to return it to the owner, and walked to the adjacent street corner, 20th and L Streets NW., and then turned south on 20th Street; that the witness walked out of the shop after Williams and walked as far as the corner of 20th and L Streets NW. and watched Williams going south on 20th Street carrying the bag and continued to watch him until Williams had crossed the intersection of 20th and K Streets NW., and was continuing on south on 20th Street toward I Street; that thereupon the witness turned back and walked back to the shop. The witness

further testified that Williams did not at any time attempt to sell the bag.

Thereupon the defendant Williams took the witness stand on his own behalf, and testified that he lived in Stephenson Court, which is located in the block bounded by 21st Street, 22nd Street, L Street and M Street NW.; that he did not frequent Government Court; that he was not well acquainted with Patty Lises and John Thomas Lises; that he had been acquainted with the defendant Childs for about six months,

14 but was not a close friend of his; that his usual work was construction, operating compressed air drills and the like; that there had not been much of that work in recent months, and that he had been doing various jobs that he could find and had frequently collected old newspapers and magazines for sale to the junk shop at 2000 L Street NW., run by Maurice Wall. Williams further testified that on the morning of August 18, 1943, he and Childs worked for a man named Brown who had a truck and who was going that morning to collect some scrap metal; that they finished with that work about noon; that during the morning Childs had some liquor to drink a couple of times; that when they finished with the work on the truck they left it at Stephenson Court and walked over by Government Court and there were asked by a person at the Lises' house to do an errand which took them down 20th Street toward Pennsylvania Avenue; that as they were passing 20th and I Streets NW. the lady in the third house from the corner on the north side of I Street, east of 20th Street, called to him, Williams, and said she had some newspapers for him, and he told her he would come back later and get them; that he and Williams completed their errand and then went from Government Court to a sort of restaurant on 20th Street between L and M; that Childs continued drinking; that about 12:30 he, Williams, left Childs there to go to the junk shop to borrow a wheel barrel to get the newspapers the lady on I Street had spoken to him about earlier in the day; that Childs started to come with him but he told Childs not to come that he, Childs, was drunk and that Maurice Wall would not lend him, Williams, the wheel barrel if Childs was there in his condition. Williams stated that thereupon he left Childs at that

place and went to the junk shop and borrowed the wheel barrel from Wall; that he then proceeded with the wheel barrel to the house on I Street, located as previously described, and

15 left the wheel barrel standing near the curb in front of the house. He testified further that the lady directed him down the basement steps to get the newspapers.

He went down these steps, which go under the front steps of the house, and then had to turn back toward the street under the front steps and the sidewalk into a space where the newspapers were stacked up; that while he was down there getting the newspapers he could not see anyone or anything on the street; that he proceeded to get the papers down from a kind of shelf on which they were stacked, and gather them into bundles and tie up the bundles with string, and that this operation took him about thirty-five minutes from the time that he left the street until he came up with the first bundle of newspapers. Williams further testified that upon returning to the street with the first bundle of newspapers, when he started to put them into the wheel barrel he discovered lying on the bottom of the wheel barrel a black bag; that he looked around and saw Childs standing a little distance down the street leaning against a tree and quite drunk, so that he was leaning on the tree for support; that he, Williams, dropped the bundle of newspapers in the wheel barrel and spoke to Childs, asking him where the bag came from; that Childs stated he had found it on top of a garbage can; that the wheel barrel was in a slightly different position from the way he had left it; that he, Williams, went back into the areaway and brought up more papers until he had collected them all in the wheel barrel and that he then started with the wheel barrel to the junk shop. He testified further that Childs followed him along up 20th Street, and when they got near L Street he wanted to go with him to the junk shop, but he told Childs to go on about his business and not to come around the junk shop because he was drunk; that Childs went on up 20th Street in the direction of Government Court; that he, Williams, turned with the wheel barrel into L Street and went to the junk shop. Williams testified further that on arrival at the junk shop he began unloading newspapers onto the scales and Maurice Wall

16 and Louis Hicks were there weighing them up and that when the last of the newspapers had been taken out of the wheel barrel Wall noticed the bag lying in the wheel barrel and asked him what he had there; that he said he had a bag; that Wall said it looked like a doctor's bag and asked him where he got it; that he told them that he did not know where it came from; that Childs had said that he had found it on a garbage can. He, Williams, further told them that if it was a doctor's bag they better call up the police so that he could turn it over to them, or that they should call the owner; that the bag was opened to see whether the owner's name could be found in it, and the name of a doctor was found in it and Wall looked the name up in the telephone book and wrote the address on a slip of paper and gave it to the witness telling him the address was just up the street at 20th and I Streets NW.; that Wall did not telephone because he was too busy. Williams further testified that he then took the bag and went south on 20th Street to 20th and I Streets NW. and went to the house on the southeast corner and up to the door, and that the lady who answered the door, when he said he wanted to return this bag to the doctor, told him there was not any doctor living there and to go on and get away from there. Williams further testified that he does not read well. He further testified that he thought Maurice Wall had put down the wrong address for the doctor. Williams testified further that when he was told by the lady to get away from that house he then went down Pennsylvania Avenue and tried two or three other places to find out something about where the owner of the bag lived, but was unsuccessful and so started back to Government Court to find Childs and turn the bag over to him, as Childs was responsible for it; that he found Childs at the Lisles' house in Government Court; that Childs was seated in the kitchen on the bottom step of the stairs going to the second floor; that he put the bag down in front of Childs and told him

17 there it was; that Childs was still drunk and that some of the other people in the house were too; that one or two of them started opening the bag and taking things out of it, among others the kit of doctor's knives and an object which Williams indicated was the stethoscope; that he told them that

they should not do that, they would damage the things; that he took the stethoscope and other things away from them, and put them all back in the bag and closed the bag up and handed it over to another man to put away; that this other man went out in the backyard and over the fence to the yard next door and put the bag in the wood box.

On cross-examination the defendant testified that he took the bag to Patty Lises' house; that after he had taken the bag out of Patty Lises' house and it had been put away, he had occasion to see a police officer who was walking down the alley in back of the house where the bag was put away, and told the police officer that he had a doctor's bag and the police officer paid him no heed and proceeded on his way. Williams further testified that shortly after that Officer Bailey and another officer came into Government Court in a scout car and approached him and Bailey asked him if he had had a doctor's bag; that he told Bailey he had and told him where it was put away, and sent another man back in the yard who got it out and brought it to Williams and Officer Bailey and delivered it to Bailey. Williams further testified substantially as had Officer Bailey as to the events transpiring after that.

Thereupon, both defendants rested. The Government offered no rebuttal testimony. No prayers for instructions were requested or offered by counsel. Thereupon, the Court instructed the jury as follows:

Members of the jury, the indictment in this case charges the defendants James Williams and James M. Childs with the crime of grand larceny. To this indictment the defendants have interposed a plea of not guilty. Larceny is the
 18 felonious taking and carrying away of the property of another with intent to permanently deprive the owner of the property therein. If the property so taken and carried away is of the value of \$50.00 or upward, it is grand larceny. If the value of the thing so taken and carried away is less than \$50.00, it is petit larceny.

It is the duty of the jurors in a criminal case to take the law of the case from the Court and to apply that law to the facts as they find them to be from the evidence. Upon the Court rests the responsibility of declaring the law, and upon the jury

is the responsibility of applying that law, so declared, to the facts shown in the evidence as in their judgment and conscience they find them to be.

The purpose and object of an indictment in a criminal case is to inform the defendants of the nature and character of the accusations against them. An indictment does not amount to evidence against the defendants in any degree whatever, and the only purpose for which it may be considered by the jury is to determine the crime of which the defendants are accused.

In considering the facts in this case you are instructed that the law presumes that the defendants are not guilty. That presumption of innocence means that it is a presumption of the law that the defendants did not commit the offense of which they are charged. The presumption should continue to prevail in your minds in such way as to cause you to find the defendants not guilty, unless from all of the facts and circumstances in evidence in the case you are convinced beyond a reasonable doubt that they are guilty of the offense which they are charged with.

The burden of proof is upon the Government. This means that the prosecution must establish the guilt of the defendants beyond a reasonable doubt before you will be warranted in finding them guilty. That burden continues from the beginning to the end of the trial, and applies to every essential element necessary to constitute the crime.

Reasonable doubt means such a doubt as will leave your mind, after a careful, candid, and impartial investigation of all the facts in the case, so undecided that you are
 19 unable to say that you have an abiding conviction of the guilt of the defendants, or such a doubt as in the graver and more important transactions of life would cause a reasonable and prudent person to hesitate and pause.

If the evidence fails to come up to this standard, it is such as to warrant such a doubt; and if you have a reasonable doubt, the law says that the defendants shall have the benefit of it; and in such case your verdict should be "not guilty."

The words "reasonable doubt" must be given their usual and ordinary meaning. The doubt must not be trivial or whimsical or based upon groundless conjecture, but it must be one that

arises out of the evidence or from the lack of necessary evidence and one which to you appears reasonable in the case; and if you can reconcile the evidence with any reasonable hypothesis consistent with the innocence of the defendants, you should do so; and in that case your verdict should be "not guilty."

You are further told that to justify you in returning a verdict of "guilty," the evidence must be such in character as to satisfy your judgment, to the exclusion of every reasonable doubt. It is not meant by this that the proof should establish the guilt of the defendants to an absolute certainty, but merely that you should not convict unless from all the evidence you believe that the defendants are guilty beyond a reasonable doubt.

You are the sole judges of the credibility of the witnesses and of the weight of the testimony of each. You should accord to the testimony of each witness that degree of credit which in your honest judgment you think it ought to have, taking into consideration insofar as you are able to do so from their manner and appearance upon the stand whether it be frankly and honestly given, the apparent intelligence or lack of intelligence of the witness, his opportunity and ability to observe the

20 facts that transpired within his presence, and his capacity to remember what at prior times had occurred, and his ability to express accurately and communicate to you through the medium of words that which passed within his observation, and also what, if any, interest a witness has in the outcome of the case and whether on that account he has colored in any way the facts related in his testimony and, if so, whether or not there is manifested by any witness any bias, prejudice, or feeling for or against the defendants and, if so, whether or not because of that he has colored his testimony one way or the other.

You are the sole judges of the facts of this case, as well as of the credit to be given to the witnesses and of the weight which will be allowed to the testimony of each of them.

If you find that any witness has knowingly testified falsely with respect to any matter material to the issues of this case and concerning which he might not reasonably be mistaken, you may, if you wish, disregard all or any part of the testimony

of such witness, although you are not obliged to do so as a matter of law.

There was offered in this case evidence tending to show that the defendant Childs had been convicted at a previous time of another offense. That testimony was admitted not for the purpose of determining whether or not the defendant, who was convicted of committing such other offense, committed the offense with which he is now charged; but it is to be considered by you only in determining the credibility of the defendant as a witness in his own behalf and to aid you in determining what weight you will give his testimony.

There is a principle of law which you may apply in reaching your verdict if in your judgment the facts of the case warrant application of the principle. Where two or more persons are jointly engaged in the furtherance of an unlawful purpose each person so joined up in the furtherance of that unlawful purpose adopts as his own anything done by any other person so joined up with him in the unlawful venture.

21 This principle of law arises out of a statute which provides that in prosecutions for any criminal offense all persons advising, inciting, or conniving at the offense, or aiding or abetting the principal offender, shall be charged as principals. It is the theory of the Government that Childs actually took and carried away the doctor's case from his automobile and placed it in Williams' wheelbarrow and that Williams knowing that the doctor's case was stolen carried it away in his wheelbarrow and removed it therefrom to a place of concealment and that in so doing he was acting in concert with Childs to perpetrate the offense of larceny. In order to warrant a conviction of Williams you must find beyond a reasonable doubt from the facts and circumstances shown in the evidence as an essential element of the Government's case against Williams that there was a mutual understanding between Childs and Williams that they, acting in concert, would effect the larceny of the doctor's case.

The only possible verdicts that you may return in this case as to either or both defendants may be guilty as charged, or if you find the value of the property taken was less than \$50.00 and believe beyond a reasonable doubt that either or both are guilty,

a verdict of guilty of petit larceny as to either or both, depending upon how you find. If you have a reasonable doubt as to the guilt of either or both defendants then your verdict should be not guilty as to either or both.

At the conclusion of the Court's charge, counsel for defendant Williams noted an exception to that part of the charge relating to joint enterprise of the two defendants, and requested the Court to instruct the jury that they must find the defendant Williams not guilty, unless the jury was satisfied beyond a reasonable doubt that the defendant Williams aided and assisted or connived in the taking of the property, as well as in the carrying away thereof. The Court refused to instruct
22 as so requested, stating that the matter had been covered by his general instructions. Exception was duly noted.

Thereupon, the jury retired to consider their verdict.

The Court certifies that the foregoing bill of exceptions contains the substance of all of the evidence offered by both the Government and the defendants, upon the trial of this case.

Because the matters and things herein recited are not matters of record, in order to make the same a part of the record herein, which is hereby ordered, so that the defendant Williams may have his case reviewed on appeal, the defendant, by his attorney, moves the Court to sign and seal this, its bill of exceptions, to have the same force and effect as if the said exception had been separately signed and sealed, which motion is granted by the Court; and thereupon, the defendant tenders this, his bill of exceptions, and requests the Court to sign and seal the same which is accordingly done this 23rd day of November 1943.

F. DICKINSON LETTS,

Justice.

Settlement by the Court of the foregoing bill of exceptions is hereby consented to.

EDWARD M. CURRAN,

Edward M. Curran,

United States Attorney.

BERNARD MARGOLIUS,

Bernard Margolius,

Assistant United States Attorney.

HERBERT P. LEEMAN,

Herbert P. Leeman,

Attorney for Defendant Williams.

23

In the District Court of the United States
for the District of Columbia

Criminal No. 72448

UNITED STATES OF AMERICA

vs.

JAMES WILLIAMS

Filed Nov. 23, 1943. Charles E. Stewart, Clerk.

Assignment of errors

The Court erred:

1. In failing to direct a verdict of "not guilty" for the defendant, James Williams, at the close of the Government's case.
2. In failing to direct a verdict of "not guilty" for the defendant, James Williams, at the close of all the testimony in the case.
3. In its instructions to the jury.

HERBERT P. LEEMAN.

Herbert P. Leeman.

Services is hereby acknowledged of the foregoing assignment of errors on this 23rd day of November 1943.

BERNARD MARGOLIUS,

Bernard Margolius,

Assistant United States Attorney.

24

In the District Court of the United States
for the District of Columbia

Criminal No. 72448

UNITED STATES OF AMERICA

vs.

JAMES WILLIAMS

Filed Nov. 23, 1943. Charles E. Stewart, Clerk.

Designation of record

The Clerk will please prepare the record in the above entitled cause and include therein the following:

1. Indictment.
2. Minute of Plea.

3. Verdict.
4. Judgment and sentence.
5. Bill of Exceptions.
6. Assignment of Errors.
7. This Designation of Record.
8. Clerk's Certificate.

HERBERT P. LEEMAN,
Herbert P. Leeman,
Attorney for Defendant, James Williams.

Service is hereby acknowledged of the foregoing designation of record on this 23rd day of November 1943.

Approved.

F. DICKINSON LETTS,
Justice.

BERNARD MARGOLIUS,
Bernard Margolius,
Assistant United States Attorney.

25 District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered 1 to 6, both inclusive, and 23 and 24, to be a true and correct transcript of the record, according to the designation of record for use on appeal approved by the Court and filed herein, and in accordance with Rule IX of Criminal Appeals Rules of the Supreme Court of the United States, as amended, in cause entitled *United States vs. James Williams, et al.*, Criminal No. 72448, as the same remains upon the files and of record in said Court, except the following:

The Bill of Exceptions approved by the Court, pages 7 to 22, both inclusive, is included herein.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 30th day of November 1943.

[SEAL]

CHARLES E. STEWART,
Clerk.

By CHERT B. COFLIN,
Deputy Clerk.

26 In the Supreme Court of the District of Columbia
Criminal No. 72448

UNITED STATES OF AMERICA

vs.

JAMES WILLIAMS AND JAMES M. CHILDS

United States Court of Appeals for the District of Columbia.
Filed Oct. 20, 1943. Joseph W. Stewart, Clerk.

Notice of appeal

James Williams, Washington Asylum and Jail, Washington,
D. C.

D. C. Colladay, 1331 G Street NW., Washington, D. C.
Offense: Grand Larceny.

Date of judgment: October 15, 1943.

Brief description of judgment or sentence: Sentenced to im-
prisonment in penitentiary for from four months to one year
and one day.

Name of prison where now confined, if not on bail: Wash-
ington Asylum and Jail.

I, the above-named appellant, hereby appeal to the Court of
Appeals of the District of Columbia from the judgment above-
mentioned on the grounds set forth below.

JAMES WILLIAMS,
Appellant.

D. C. COLLADAY,
Attorney for Appellant.

Date: October 20, 1943.

Grounds of appeal

Evidence showed codefendant, Childs, took the property in-
volved, a doctor's bag of instruments, from automobile and
carried it away to a nearby place where, when appellant first
saw it, it was lying in a wheelbarrow he was using to collect
waste newspapers; that appellant continued assembling waste
newspapers in the wheelbarrow without removing the bag; that
appellant wheeled the whole to a nearby junk yard and sold the
newspapers without attempting to sell the bag, the nature of

which the evidence showed he did not know; that, upon being advised there and then of the nature of the bag, he endeavored to return it to the owner, but unsuccessfully; that later the same day when questioned by police, appellant produced and surrendered the bag.

The trial judge refused to instruct the jury that, unless they found appellant had connived at the taking of the bag before he found it in the wheelbarrow, they must find the defendant not guilty. The trial judge, instead, instructed the jury, over appellant's objection, that if they should find that appellant aided codefendant, Childs, in the carrying away of the bag after it had been taken, they should find him guilty. The trial judge noted exceptions on behalf of appellant.

A True Copy.

Test:

[SEAL]

CHARLES E. STEWART,

Clerk.

By MARGARET T. QUICK,

Deputy Clerk.

27 In the Supreme Court of the District of Columbia

Criminal No. 72448

UNITED STATES OF AMERICA

vs.

JAMES WILLIAMS AND JAMES M. CHILDS

United States Court of Appeals for the District of Columbia.
Filed Oct. 20, 1943. Joseph W. Stewart, Clerk.

Notice of appeal

James Williams, Washington Asylum and Jail, Washington,
D. C.

D. C. Colladay, 1331 G Street NW., Washington, D. C.

Offense: Grand Larceny.

Date of judgment: October 15, 1943.

Brief description of judgment or sentence Sentenced to imprisonment in penitentiary for from four months to one year and one day.

Name of prison where now confined, if not on bail: Washington Asylum and Jail.

I, the above-named appellant, hereby appeal to the Court of Appeals of the District of Columbia from the judgment above-mentioned on the grounds set forth below.

JAMES WILLIAMS,
Appellant.

D. C. COLLADAY,
Attorney for Appellant.

Date: October 20, 1943.

Grounds of appeal

Evidence showed codefendant, Childs, took the property involved, a doctor's bag of instruments, from automobile and carried it away to a nearby place where, when appellant first saw it, it was lying in a wheelbarrow he was using to collect waste newspapers; that appellant continued assembling waste newspapers in the wheelbarrow without removing the bag; that appellant wheeled the whole to a nearby junk yard and sold the newspapers without attempting to sell the bag, the nature of which the evidence showed he did not know; that, upon being advised there and then of the nature of the bag, he endeavored to return it to the owner, but unsuccessfully; that later the same day when questioned by police, appellant produced and surrendered the bag.

The trial judge refused to instruct the jury that, unless they found appellant had connived at the taking of the bag before he found it in the wheelbarrow, they must find the defendant not guilty. The trial judge, instead, instructed the jury, over appellant's objection, that if they should find that appellant aided codefendant, Childs, in the carrying away of the bag after it had been taken, they should find him guilty. The trial judge noted exceptions on behalf of appellant.

A True Copy.

Test:

[SEAL]

CHARLES E. STEWART,
Clerk.

By MARGARET T. QUICK,
Deputy Clerk.

28 In the District Court of the United States for the
District of Columbia

Clerk's statement of docket entries to accompany duplicate
notice of appeal to the Court of Appeals.

Criminal No. 72448

Charge: Grand Larceny

Atty.: D. C. Colladay.

UNITED STATES OF AMERICA

vs.

JAMES WILLIAMS

1943

- Aug. 30—Presentment and indictment filed.
30—Order appointing D. C. Colladay atty. to defend
filed.
- Sept. 3—Arraigned, Plea Not Guilty.
16—Jury sworn and respited until tomorrow.
17—Trial resumed, same jury. Verdict guilty as
indicted.
- Oct. 15—Sentence to Imprisonment for period of 4 mos. to
1 yr. and 1 day. Judgment signed (Letts, J.).
15—Pauper affidavit and order on appeal filed (Letts, J.).
20—Deft. elects to begin the service of his sentence pend-
ing appeal.
20—Notice of Appeal-filed.

Date October 20, 1943.

Attest:

[SEAL]

CHARLES E. STEWART,

Clerk.

By MARGARET T. QUICK,

Deputy Clerk.

NOTE.—This statement from the docket entries is intended
suitably to identify the case and not as a substitute for the rec-
ord on appeal, which is to be prepared and certified as provided
in Rules 7, 8, and 9, of Supreme Court U. S.

29 In the District Court of the United States for the
District of Columbia

Clerk's statement of docket entries to accompany duplicate
notice of appeal to the Court of Appeals.

Criminal No. 72448

Charge: Grand Larceny

Atty.: D. C. Colladay.

UNITED STATES OF AMERICA

vs.

JAMES WILLIAMS

1943

- Aug. 30—Presentment and indictment filed.
30—Order appointing D. C. Colladay atty. to defend
filed.
- Sept. 3—Arraigned, Plea Not Guilty.
16—Jury sworn and respited until tomorrow.
17—Trial resumed, same jury. Verdict guilty as
indicted.
- Oct. 15—Sentence to Imprisonment for period of 4 mos. to
1 yr. and 1 day. Judgment signed (Letts, J.).
15—Pauper affidavit and order on appeal filed (Letts, J.).
20—Deft. elects to begin the service of his sentence pend-
ing appeal.
20—Notice of Appeal filed.

Date October 20, 1943.

Attest:

[SEAL]

CHARLES E. STEWART,

Clerk.

By MARGARET T. QUICK,

Deputy Clerk.

NOTE.—This statement from the docket entries is intended
suitably to identify the case and not as a substitute for the rec-
ord on appeal, which is to be prepared and certified as provided
in Rules 7, 8, and 9, of Supreme Court U. S.

30 In the District Court of the United States for the
District of Columbia

Criminal No. 72448

UNITED STATES

vs.

JAMES WILLIAMS, JAMES M. CHILDS

*Affidavit in support of application for leave to proceed without
prepayment of costs*

I, James Williams, being first duly sworn according to law, depose and say that I am the defendant in the above-entitled cause, and, in support of my application for leave to proceed in said cause without being required to prepay fees or costs, state as follows:

1. That I am a citizen of the United States.
2. That because of my poverty I am unable to pay the costs of said suit or action.
3. That I am unable to give security for the same.
4. That I believe I am entitled to the redress I seek in said suit or action.
5. That the nature of my cause of action is briefly stated as follows:

Appeal from conviction and sentence on charge of grand larceny.

(S) JAMES WILLIAMS.

Subscribed and sworn to before me this 15th day of October 1943.

Notary Public, D. C.

Let the defendant proceed on appeal without prepayment of costs.

(S) F. DICKINSON LETTS,
Justice.

A True Copy.

Test:

CHARLES E. STEWART,
Clerk.

By MARGARET T. QUICK,
Deputy Clerk.

31 In the District Court of the United States for the
District of Columbia
Criminal No. 72448
UNITED STATES

vs.

JAMES WILLIAMS, JAMES M. CHILDS

Filed Oct. 15, 1943. Charles E. Stewart, Clerk.

*Affidavit in support of application for leave to proceed without
prepayment of costs*

I, James Williams, being first duly sworn according to law, depose and say that I am the defendant in the above-entitled cause, and, in support of my application for leave to proceed in said cause without being required to prepay fees or costs, state as follows:

1. That I am a citizen of the United States.
2. That because of my poverty I am unable to pay the costs of said suit or action.
3. That I am unable to give security for the same.
4. That I believe I am entitled to the redress I seek in said suit or action.
5. That the nature of my cause of action is briefly stated as follows:

Appeal from conviction and sentence on charge of grand larceny.

JAMES WILLIAMS.

Subscribed and sworn to before me this 15th day of October 1943.

Let the defendant proceed on appeal without prepayment of costs.

(S) F. DICKINSON LETTS,

Justice.

A true copy.

Attest:

CHARLES E. STEWART,

Clerk.

MARGARET T. QUICK,

Deputy Clerk.

[Endorsement on cover:] No. 8617. James Williams, appellant vs. United States of America, appellee.

United States Court of Appeals for the District of Columbia.
Filed Nov. 30, 1943. Joseph W. Stewart, Clerk.